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OCT 13 2005

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In re Application of
Krzysztof Stanuszek
Application No. 10/708,997
Filed: April 6, 2004
For: IMPROVED SAUSAGE STUFFER

PETITION TO WITHDRAW
PREMATURE FINAL
REJECTION UNDER
37 CFR 1.181

Applicant's petition, filed on September 21, 2005, requests withdrawal of the finality of the Office action mailed June 2, 2005 as being premature.

The petition is **GRANTED**.

Applicant alleges that the final rejection mailed on June 2, 2005 is premature because the Examiner had utilized newly cited prior art "the Eastman Outdoors Sausage Stuffer" to reject at least claims 11 and 18 under 35 USC 102(b). Applicant further alleges that instant claims 11 and 18 were not amended during prosecution of the present application prior to the June 2, 2005 Office action. Therefore the applicant concludes that the Examiner's final office action mailed June 2, 2005 finally rejecting claims 11 and 18 based upon applicant's amendment necessitating a new grounds of rejection was improper.

MPEP 706.07(a) [R-1] Final Rejection, When Proper on Second Action states in part:

"Due to the change in practice as affecting final rejections, older decisions on questions of prematurity of final rejection or admission of subsequent amendments do not necessarily reflect present practice.

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). "

A review of the file history reveals that original claims 11 and 18 were not amended prior to the Office action mailed on June 2, 2005. Examiner's new grounds of rejection of claims 11 and 18 were not necessitated by applicant's amendment to the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c). Therefore the basis for the Examiner making that Office action final was improper since Examiner's application of the newly cited prior art "the Eastman Outdoors Sausage Stuffer" to reject original unamended claims 11 and 18 did not serve as a proper basis under MPEP 706.07(a) to make the second office action final.

The finality of the Office action mailed on June 2, 2005 is hereby withdrawn and the amendment after final received on August 4, 2005 will be entered accordingly. The Examiner's advisory action mailed on August 17, 2005 is hereby **VACATED**. This application is being returned to the Examiner for consideration of the amendment filed on August 4, 2005.



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pmp/snm: 9/27/05

